



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

April 12, 1939

Mr. E. Y. Cunningham
County Auditor
Navarro County
Corsicana, Texas

Dear Sir:

Opinion No. O-569

Re: Should witness fees be paid out
of county witnesses in misdemeanor
cases in county courts? If so,
how much and by whom?

Your request for an opinion on the above stated question has been received by this office.

Title 15, chapters two, three and four of the Code of Criminal Procedure provides for the payment of costs in criminal actions under three separate and distinct subdivisions, (1) cost paid by the state, (2) cost paid by counties and (3) cost to be paid by the defendant.

Article 1036, Code of Criminal Procedure authorizes and provides for compensation of any witness who may have been recognized, subpoenaed or attached and given bond for his appearance before any court or before any grand jury, out of the county of his residence to testify in a felony case, and who appears in compliance with the obligations of such recognizance or bond, this statute further provides witness fees shall be allowed only to such witnesses as may have been summoned on the sworn written application of the State's attorney or the defendant or his attorney as provided in Article 463, Code of Criminal Procedure, which sworn application must be made at the time of the procuring of the subpoena, attachment for, or recognizance of, the witness.

Mr. E. Y. Cunningham, April 12, 1939, Page 2

Article 1036, Code of Criminal Procedure, supra, applies only to out of county witnesses in felony cases before the District Courts and has no application as to witnesses in misdemeanor cases in the county courts.

Article 475, Code of Criminal Procedure, provides:

"Where a witness resides out of the county in which the prosecution is pending, the State or the defendant shall be entitled, either in term or in vacation, to a subpoena to compel the attendance of such witness on application to the proper clerk or magistrate. Such application shall be in the manner and form as provided in Article 463, Code of Criminal Procedure."

The above quoted statute applies only to witnesses in felony cases, who reside out of the county in which the prosecution is pending, and has no application whatsoever to witnesses who reside out of the county, in which the prosecution is pending in misdemeanor cases.

Relative to costs paid by the defendant, in criminal action, Article 1078, Code of Criminal Procedure provides:

"Witnesses in criminal cases shall be allowed one dollar and fifty cents a day for each day they are in attendance upon the court, and six cents for each mile they may travel in going to or returning from the place of trial."

After a thorough search of the statutes we are unable to find any authority that authorizes or prescribes the manner by which out of county witnesses may be recognized, subpoenaed or attached in misdemeanor cases in the county courts, nor do we find any statutes providing for the compensation of out of county witnesses in misdemeanor cases.

303
680

Mr. E. Y. Cunningham, April 12, 1939, Page 2

You are respectfully advised that it is the opinion of this Department that the statutes do not make any provisions by which out of county witnesses may be recognized, subpoenaed or attached in misdemeanor cases in the county courts, nor do the statutes provide for the compensation of out of county witnesses in such cases.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

AW:AW

APPROVED:

George C. Mann
ATTORNEY GENERAL OF TEXAS